

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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LAWRENCE DOW,

Plaintiff,

-against-

OGLEBAY NORTON and SUBSIDIARIES;  
COLUMBIA TRANSPORTATION CO.,

Defendants.

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**BLOOM, United States Magistrate Judge:**

Plaintiff, proceeding *pro se*, paid the filing fee and filed the instant action on September 9, 2005. By order dated September 16, 2005, the Court directed plaintiff to serve the summons, complaint and a copy of the Court's September 16 order on defendants by January 9, 2006. The Court's order expressly warned plaintiff that if he failed to serve the summons and complaint upon defendants by January 9, 2005 or failed to show good cause why such service was not effected, I would recommend that the Court should dismiss this action without prejudice pursuant to Fed. R. Civ. P. 4(m).

Plaintiff wrote to the Court on December 12, 2005 and reported that the attorneys representing him in a separate products liability action against these defendants had informed him that defendants filed for bankruptcy on January 31, 2005. Plaintiff stated that he had therefore "lost \$250 I paid for the index number [to file the instant case]." Plaintiff's statement that he "was going to" (emphasis added) pursue the instant case on his own behalf was unclear as to whether he intended to pursue this action. Because plaintiff's intention was unclear, I issued an order on January 24, 2006 directing plaintiff to either serve the summons and complaint upon defendants or to write to voluntarily discontinue this case by February 27, 2006. I warned plaintiff that if he did not either file

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U.S. DISTRICT COURT, E.D.N.Y.

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**BROOKLYN OFFICE**

a return of service or write to discontinue this action by February 27, I would recommend that this case should be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedure for plaintiff's failure to effect service of process upon defendants.

Plaintiff did not file proof of service or show good cause why service has not been made, nor has he written to the Court to voluntarily discontinue this action. Accordingly, it is respectfully recommended that the instant action should be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

#### **FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections (and any responses to objections) shall be filed with the Clerk of the Court. Any request for an extension of time to file objections must be made within the ten-day period. Failure to file a timely objection to this Report generally waives any further judicial review. Marcella v. Capital Dist. Physician's Health Plan, Inc., 293 F.3d 42 (2d Cir. 2002); Small v. Sec'y of Health and Human Services, 892 F.2d 15 (2d Cir. 1989); see Thomas v. Arn, 474 U.S. 140 (1985).

SO ORDERED.

  
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LOIS BLOOM  
United States Magistrate Judge

Dated: June 26, 2006  
Brooklyn, New York